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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 IN THE MATTER OF THE  
20 EXTRADITION OF  
21 KENNETH WAYNE FROUDE,  
22 A Fugitive from the Government  
23 of Canada.

24 No. CV 15-8623-JLS-E

25 GOVERNMENT'S SUPPLEMENTAL  
26 MEMORANDUM IN SUPPORT OF  
27 EXTRADITION

28 On behalf of the government of Canada, complainant United States  
1 of America, by and through its counsel of record, the United States  
2 Attorney for the Central District of California and Assistant United  
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1 States Attorney Nathaniel B. Walker, hereby submits its supplemental  
2 memorandum in support of extradition in the above-captioned matter.

3 Dated: May 2, 2016

Respectfully submitted,

4 EILEEN M. DECKER  
United States Attorney

5 LAWRENCE S. MIDDLETON  
6 Assistant United States Attorney  
Chief, Criminal Division

7  
8 /s/  
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10 NATHANIEL B. WALKER  
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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

The United States filed its memorandum in support of extradition on March 14, 2016. The fugitive, KENNETH WAYNE FROUDE ("FROUDE") filed his opposition on March 21, 2016. The United States filed its reply on April 4, 2016. The Court heard oral argument on April 11, 2016, following which, the Court ordered the United States to file supplemental evidence and argument to address specific questions the Court posed.

Specifically, the Court asked the United States to address:

"1) Whether the dual criminality requirement is satisfied with respect to any of the charges related to the alleged violation of the Canadian long-term offender order under the provision of 18 U.S.C. section 751(a) concerning escape 'from any institution or facility in which he is confined by direction of Attorney General'; 2) Whether the dual criminality requirement is satisfied with respect to any of the charges related to the alleged violation of the Canadian long-term offender order by analogy to 18 U.S.C. section 1073; 3) The relationship of the Correctional Service of Canada to the Canadian government and, in particular, whether the Correctional Service of Canada is analogous to the United States Bureau of Prisons; 4) With respect to the community correctional centre from which Mr. Froude allegedly absconded on or about May 18, 2013 in violation of the long-term supervision order: (a) the identity of the person(s) and/or entity(ies) which operated the centre and the relationship, if any, of such person or entity to the Correctional Service of Canada or any other agency of the Canadian government; and (b) the conditions of confinement at that centre at the time Mr. Froude left the centre;

1 and 5) The identification of the person(s) or entity(ies) which set  
2 the conditions of Mr. Froude's long-term supervision order and the  
3 relationship, if any, of such person or entity to the Canadian  
4 government and to the Correctional Service of Canada."

5 In addition to the argument contained herein, the United States  
6 has attached for the Court's consideration the affidavit of Peter  
7 Glenn, the Manager of Community Operations for the Correctional  
8 Service of Canada ("CSC"), and supporting exhibits (collectively,  
9 Exhibit 1), and the affidavit of Vanessa Wynn-Williams, counselor to  
10 the CSC Legal Services Unit (Exhibit 2).

11 **II. ARGUMENT AND ANALYSIS**

12 **A. Dual Criminality is Satisfied with Respect to 18 U.S.C.**  
13 **Section 751**

14 The Long Term Supervision Order ("LTSO") to which FROUDE was  
15 subject required him, inter alia, to: 1) reside at a Community  
16 Correctional Center ("CCC"); 2) remain in Canada; and 3) obey the law  
17 and keep the peace. For the reasons described throughout this  
18 supplemental filing, and as previously argued, dual criminality under  
19 the Extradition Treaty Between the United States of America and  
20 Canada, 27 U.S.T. 983, TIAS 8237 ("the Treaty"), exists between the  
21 first condition of the LTSO (as codified at Section 753.3(a) of the  
22 Criminal Code of Canada) and 18 U.S.C. Sections 751(a) and 4082,  
23 because the CSC is analogous to the United States Bureau of Prisons  
24 ("BOP"), the CSC owned and operated the CCC from which FROUDE  
25 escaped, and the residential condition of the LTSO was imposed by the  
26 sentencing judge when she imposed the LTSO, pursuant to a Canadian  
27 federal statute. Accordingly, both the Canadian and U.S. statutes  
28 criminalize the same basic conduct (i.e., leaving custody without

1 permission) to prevent the same basic evil (i.e., allowing convicted  
2 felons to remain at large without any supervision. Compare  
3 Supplementary Affidavit of Karen Shai, ¶ 9, previously filed April 4,  
4 2016 (discussing long-term offender provision as a sentencing option  
5 for offenders "who pose an ongoing public threat") with United States  
6 v. Brown, 333 U.S. 18, 21 n.5 (1948) (discussing considerations that  
7 led to the adoption of the escape statutes, including discouraging  
8 conduct that endangers the welfare of the custodians and crimes that  
9 often follow an escape). The "essential character of the transaction  
10 is the same, and made criminal" by the laws of both countries, Wright  
11 v. Henkel, 190 U.S. 40, 58 (1903), and this is all that is required  
12 to satisfy the dual criminality requirement in an extradition  
13 proceeding.

14 Dual criminality is further met because Section 753.3 of the  
15 Criminal Code of Canada criminalizes any violation of an LTSO,  
16 including the general conditions that FROUDE remain in Canada, and  
17 obey the law and keep the peace. "The primary focus of dual  
18 criminality has always been on the conduct charged; the elements of  
19 the analogous offenses need not be identical." Emami v. U.S. Dist.  
20 Court, 834 F.2d 1444, 1450 (9th Cir. 1987). Clearly, a parolee in  
21 the United States who had been ordered confined to a halfway house,  
22 and who left that facility without permission and went to Canada,  
23 would be subject to prosecution under 18 U.S.C. Sections 751 and  
24 4082. United States v. Foster, 754 F.3d 1186, 1190 (10th Cir. 2014)  
25 (escape from court-ordered placement in a halfway house); United  
26 States v. Jones, 569 F.2d 499, 501-02 (9th Cir. 1978) (escape from  
27 halfway house). Similarly, a parolee who failed to return to a  
28 halfway house because he had been arrested for a new offense, not

1 because he had attempted to escape, would nonetheless be prosecutable  
 2 under 18 U.S.C. Sections 751 and 4082. See United States v. Jones,  
 3 569 F.2d 499, 500 (9th Cir. 1978). In the latter example, such a  
 4 defendant would have plainly failed to "obey the law and keep the  
 5 peace." Again, the conduct of a particular fugitive is the key, and  
 6 the treaty does not require identity between statutory elements<sup>1</sup> for  
 7 offenses to be analogous. See Emami, 834 F.2d at 1450. Thus,  
 8 sufficient analogy exists between all three general requirements of  
 9 the LTSO and 18 U.S.C. Sections 751 and 4082, to satisfy the Treaty's  
 10 dual criminality requirement.

11       **B. Dual Criminality is Satisfied with Respect to 18 U.S.C.**  
 12                   **Section 1073**

13       Dual criminality also exists between the second condition of the  
 14 LTSO - i.e., that FROUDE remain in Canada - and 18 U.S.C. Section  
 15 1073, Unlawful Flight to Avoid Prosecution. Where, as here, an  
 16 individual intentionally crosses an international border to avoid the  
 17 restrictions placed upon him by a criminal court, such conduct would  
 18 violate either Criminal Code of Canada Section 753.3(a)<sup>2</sup> or 18 U.S.C.  
 19 Section 1073.

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20                   <sup>1</sup> "A requesting country is not obligated to produce evidence on  
 21 all elements of a criminal offense, nor to establish that its crimes  
 22 are identical to ours." Kelly v. Griffin, 241 U.S. 6, 15 (1916);  
Brauch v. Raiche, 618 F.2d 843, 851 (1st Cir. 1980) ("[S]trict  
 23 congruity of offenses is [not] necessary to meet the test of double  
 24 criminality . . . the offenses of the two countries must be  
 25 substantially analogous."). Furthermore, "extradition treaties,  
 unlike criminal statutes, are to be construed liberally in favor of  
 enforcement because they are 'in the interest of justice and friendly  
 international relationships.'" United States v. Lui Kin-Hong, 110  
 F.3d 103, 110 (1st Cir. 1997) (citing Factor v. Laubenheimer, 290  
 U.S. 276, 295 (1933)).

27                   <sup>2</sup> Section 753.3(a) of the Canadian Criminal Code sets out the  
 28 provision of an LTSO requiring an LTO like FROUDE to remain in  
 Canada.

1       Section 1073 criminalizes, inter alia, "mov[ing] or travel[ing]  
2 in interstate or foreign commerce with intent . . . to avoid  
3 prosecution, or custody or confinement after conviction." Section  
4 1073 covers not only pre-conviction flight, but like the Canadian  
5 LTSO, also covers post-conviction flight to avoid confinement. See,  
6 e.g., United States v. Alcarez Camacho, 340 F.3d 794, 797 (9th Cir.  
7 2003) (failure to appear for sentencing).

8       Furthermore, not only does Section 1073 apply to criminal  
9 defendants (pre- and post-conviction), it also extends to witnesses  
10 who move in interstate or foreign commerce with intent to avoid  
11 giving testimony in criminal proceedings, as well as persons who do  
12 so to avoid service of process by a state agency. See 18 U.S.C. §  
13 1073. Accordingly, the purpose of Section 1073 is to address not  
14 only the threat to public safety posed by "roving criminals," United  
15 States v. Brandenburg, 144 F.3d 656, 660 (3d Cir. 1994), but also  
16 "the threat to the integrity and authority of the court posed by"  
17 persons who refuse "to abide by lawful court orders," Alcarez  
18 Camacho, 340 F.3d at 797 (internal citation and punctuation omitted).  
19 Thus, just like the Canadian statute, which criminalizes, inter alia,  
20 failure to remain in Canada in violation of a court-imposed LTSO,  
21 Section 1073 criminalizes interstate or foreign travel with intent to  
22 avoid custody or confinement, or compliance with a court order.  
23 Therefore, dual criminality is satisfied under the Treaty because the  
24 Canadian statute punishes the same conduct and addresses the same  
25 purposes as Section 1073.

26       **C. The CSC is Analogous to the United States Bureau of Prisons**

27       Peter Glenn, CSC community operations manager, explains in his  
28 affidavit that the CSC "is a federal agency within the Government of

1 Canada's Public Safety portfolio." See Ex. 1, ¶ 3. The CSC was  
2 established by Canadian federal statute, and is charged with, inter  
3 alia, administering court-imposed sentences of two years or more.  
4 Id. This work "involves managing institutions across Canada of  
5 various security levels . . . and supervising offenders in the  
6 community . . . under long-term supervision." Id. In this regard,  
7 CSC is analogous to the United States BOP, which is charged with,  
8 inter alia, management of penal and correctional institutions,  
9 providing "suitable quarters" for persons "charged with or convicted  
10 of offenses against the United States," establishing prerelease  
11 planning procedures, and establishing re-entry planning procedures  
12 educating federal prisoners on employment, health and nutrition,  
13 personal finance and consumer skills. See 18 U.S.C. § 3621(a).  
14 Thus, the CSC is analogous to the BOP in terms of the range of its  
15 duties, and the source and scope of its powers.

16       **D. The CSC Owned and Operated the Center From Which FROUDE**  
17                   **Escaped and FROUDE was Subject to Conditions Analogous to**  
18                   **Court-Ordered Confinement in a U.S. Halfway House**

19       The Portsmouth Community Correctional Centre, currently named  
20 the Henry Trail Community Correctional Centre, is the facility from  
21 which FROUDE escaped. That CCC is and was owned and operated by CSC,  
22 and is/was subject to CSC's policies and procedures. See Ex. 1, ¶ 4.  
23 With respect to the personnel that operated the centre at the time of  
24 FROUDE's escape:

25       Community Correctional Centre (CCC) teams include CCC  
26 Managers, who handle day-to-day operations and make sure  
27 that all policies are followed. CCC Managers also  
28 coordinate and supervise the case management process for

1       the offenders residing at the CCC. Parole Officers  
2       supervise offenders to ensure they are following their  
3       release conditions. The Canadian Corps of Commissionaires  
4       provides security at CCCs 24 hours a day, seven days a  
5       week. Commissionaires monitor the centres and make sure  
6       offenders comply with the centres' rules. In addition,  
7       Psychologists, Mental Health Nurses, Social Workers,  
8       Employment Coordinators, Program Officers and Volunteer  
9       Coordinators may be available on site or located nearby.

10       Id. ¶ 5. All the personnel affiliated with each CCC have either an  
11       employment or contractual relationship with CSC. Id.

12       The general conditions of confinement at the CCC at the time  
13       FROUDE escaped included the following: the residents were supervised  
14       twenty-four hours a day, seven days a week (see Ex. 1, ¶ 5; Ex. 1-A,  
15       at 9; Ex. 1-B, ¶ 14), all residents were counted and accounted for at  
16       least twice daily, sometimes at night (Ex. 1-B, ¶ 45; Ex. 1-D, at 8),  
17       the residents' rooms were searched for contraband and unauthorized  
18       items on a daily basis, sometimes with an assistance of a canine  
19       squad (Ex. 1-B, ¶ 50; Ex. 1-D, at 8), samples of residents' urine  
20       were collected and tested on a regular basis (Ex. 1-B, ¶ 53), and  
21       residents' arrivals and departures were routinely recorded (Ex. 1-B,  
22       ¶ 46; Ex. 1-D, at 11). Also, no alcohol, drugs, weapons, or  
23       pornography was allowed at the facility. Ex. 1-D, at 13.

24       In addition to the facility's general restrictions, residents'  
25       access to the outside community was determined on a case-by-case  
26       basis, by the risk to the community that each resident posed. See  
27       Ex. 1, ¶ 9. FROUDE's community access was "Restricted Community

1 Access," meaning that FROUDE "had no unaccompanied community access."

2 Id.

3 **E. A Canadian Federal Judge and the Parole Board of Canada Set**  
4 **the Conditions of FROUDE's LTSO Pursuant to Statute**

5 An LTO subject to an LTSO is required to be supervised in  
6 accordance with the Corrections and Conditional Release Act ("CCRA")  
7 Section 134.1. See Ex. 2, ¶ 5. That section provides that LTOs are  
8 subject to the standard conditions set forth in the Corrections and  
9 Conditional Release Regulations Section 161, which requires, inter  
10 alia, that individuals released from prison under an LTSO travel  
11 directly to the designated place of residence, remain in Canada  
12 within the territorial boundaries fixed by an LTO's parole  
13 supervisor, and "obey the law and keep the peace." See Affidavit of  
14 Karen Shai, Ex. B, previously filed on March 14, 2016. Such  
15 conditions are referred to as the "standard conditions" that apply to  
16 all LTOs subject to LTSOs. See Affidavit of Karen Shai, ¶ 17. Thus,  
17 the sentencing judge automatically set the general conditions of  
18 FROUDE's LTSO, pursuant to statute, when she designated him an LTO.

19 In addition, the CCRA empowers the Parole Board of Canada  
20 ("PBC")<sup>3</sup> to impose any conditions "that it considers reasonable and  
21 necessary in order to protect society and to facilitate the  
22 successful reintegration into society of the offender." See Ex. 2,  
23 ¶ 6. Such conditions of an LTSO are referred to as "special  
24 conditions" that may be imposed on LTOs on a case-by-case basis. See  
25 Affidavit of Karen Shai, ¶ 17. Accordingly, the PBC imposed the

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<sup>3</sup> The PBC is part of the Canadian government, but is independent  
28 of the CSC.

1 special conditions<sup>4</sup> of FROUDE's LTSO, pursuant to its authority under  
2 the CCRA. See Ex. 2, ¶ 9.

3 **III. CONCLUSION**

4 The United States respectfully requests, on behalf of the  
5 government of Canada, that this Court certify the extradition of  
6 FROUDE to the Secretary of State for surrender to the Canadian  
7 government.

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25       <sup>4</sup> The special conditions the PBC specifically imposed upon  
26 FROUDE required him to avoid certain persons, have no contact with  
27 his victims, receive counseling, reside at a CCC approved by the CSC,  
28 abstain from alcohol and drugs, have no association with someone  
engaged in criminal activity, and report to his parole supervisor any  
and all contacts with women. See Affidavit of Lisa Manson, Exhibit  
B, previously filed on March 14, 2016.